

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WILLIAM T. WHITMAN, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

STATE FARM LIFE INSURANCE COMPANY,  
an Illinois corporation

Defendant.

No. 3:19-cv-06025-BJR

DEFENDANT STATE FARM LIFE  
INSURANCE COMPANY'S REPLY  
MEMORANDUM IN FURTHER SUPPORT  
OF ITS MOTION TO AMEND THE CLASS  
CERTIFICATION SCHEDULE AND  
ENLARGE PAGE LIMITS FOR RELATED  
BRIEFING

State Farm respectfully submits this reply memorandum in further support of its motion, under Rule 6(b) of the Federal Rules of Civil Procedure and Local Rules 7(f) and 7(j), to amend the Court's July 17, 2020 Order Setting Class Pre-Certification Deadlines and to enlarge the page limits on related briefing.

**ARGUMENT**

Plaintiff's half-hearted opposition assumes that discovery in *this* case is complete and the record in *this* case has been established. But State Farm is not willing to hamstring the Court by forcing it to rely solely on regurgitated evidence from the *Bally* and *Vogt* cases. Plaintiff does not dispute that the parties must be allowed time to develop a factual record that will allow the Court to make a meaningful determination around certification issues. *See, e.g., King's Choice*

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IN FURTHER SUPPORT OF ITS MOTION TO  
AMEND THE CLASS CERTIFICATION  
SCHEDULE AND ENLARGE PAGE LIMITS FOR  
RELATED BRIEFING – NO. 3:19-cv-06025-BJR

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1 *Neckwear, Inc. v. FedEx Corp.*, No. 07-cv-02775 (DMC), 2007 WL 4554220, at \*8 (D.N.J. Dec.  
 2 21, 2007); *Moore v. Walter Coke, Inc.*, 294 F.R.D. 620, 630-31 (N.D. Ala. 2013). By this  
 3 motion, Defendant simply requests a discovery and briefing schedule that ensures the most  
 4 informative and developed record – in this case – for all parties and the Court.

5 Rather than allowing sufficient time to develop the record, Plaintiff argues that no  
 6 discovery or *Daubert* motions are needed here merely because it intends to use the same expert  
 7 as *Bally* and *Vogt*. This is misplaced, for at least two reasons:

8 First, an amended scheduling order would ensure that there is a complete record before a  
 9 motion for class certification, as required under the FRCP. The records in *Bally* and *Vogt* are  
 10 insufficient because they are (i) in other states governed by different laws, (ii) based on entirely  
 11 different data sets and policyholders, (iii) brought by different plaintiffs, and (iv) involve  
 12 different counsel. State Farm is entitled to sufficient time to prepare its defense in this case and  
 13 is not obligated to speculate as to who will serve as this Plaintiff's expert (or experts), the content  
 14 of their opinions, or whether the opinions will be the same under Washington law as under the  
 15 laws of other states. State Farms intends to depose whoever Plaintiff puts forward as an expert.  
 16 Even if that is Mr. Witt, State Farm is entitled to question his opinions in this case. And then,  
 17 upon learning the answers to its questions, State Farm can prepare its defense to *this* case, not  
 18 another case in another forum with another plaintiff under different laws. Put simply, until the  
 19 expert report and depositions are finalized in this matter, State Farm cannot properly prepare its  
 20 rebuttal of expert opinions in this case.

21 Moreover, the differences go beyond whoever Plaintiff's expert will be and whatever  
 22 Plaintiff's expert will say. There will be different fact witnesses in this case, there are different  
 23 policies, and there is a different proposed class. State Farm cannot be charged with knowing  
 24 what is being done by other counsel in other cases under different circumstances for purposes of  
 25

defending this case. State Farm has the right to put forth a full defense of this case on the merits presented in this proceeding.

Second, those other cases and the lessons within them inform this motion's timing. Although Plaintiff claims discovery in other cases obviates the need for additional time for discovery in this case, the opposite is true. While different and distinct, the learning curve from the other cases, their complexity, and their myriad issues around expert discovery has made plain that additional time beyond the current schedule is needed. State Farm's scheduling request seeks sufficient time so the parties can place before Court the facts and authorities needed to conduct the rigorous Rule 23 analysis.<sup>1</sup>

DATED this 28th day of January, 2021.

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<sup>1</sup> Plaintiff admits that he is previously agreed to enlarge page limits, yet "clarifies" that an enlargement may not be needed. Ignoring Plaintiff's semantics, State Farm only emphasizes that it intends to offer four expert reports, each of whom will provide a detailed opinion, which both apart and combined, will be extraordinarily complex. Along with challenging Plaintiff's expert(s), State Farm seeks additional pages in the service of clarity.

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**CERTIFICATE OF SERVICE**

I, Joseph D. Hampton, hereby certify that on January 28, 2021, I electronically filed the following:

- **Defendant State Farm Life Insurance Company's Reply Memorandum In Further Support Of Its Motion To Amend The Class Certification Schedule And Enlarge Page Limits For Related Briefing; and**
- **Certificate of Service;**

with the Court using the CM/ECF system which will send notification of such filing to the following:

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